

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA POTATO RESEARCH PROGRAM

Effective December 23, 1974
Incorporating Amendments Through November 10, 2002

CALIFORNIA POTATO RESEARCH PROGRAM

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Program, the following terms shall have the following meanings:

1. "Act" means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.

2. "Department" means the Department of Food and Agriculture of the State of California.

3. "California Potato Research Program" or "Program" means, unless the context indicates otherwise, this marketing order, directly affecting producers of potatoes, which is issued by the Department, pursuant to the provisions of the Act.

4. "California Potato Research Advisory Board," "California Potato Research Board," and "Board" are synonymous and mean the California Potato Research Advisory Board created pursuant to Article II of this Program.

5. "Person" means any individual, partnership, corporation, firm, association, subsidiary, affiliate, or other business unit.

6. "Potatoes", for the purposes of this Program mean any and all varieties of Irish potatoes which are produced in California and handled in fresh form for fresh consumption, manufacturing, seed and all other purposes, except potatoes destined for animal feed, starch or flour that are moved under a Disposal Order or By-Products Permit, as defined in the Food and Agricultural Code.

7. "Producer" and "Grower" are synonymous and mean any person engaged within this State in the business of producing or causing to be produced for market potatoes in a quantity of 100,000 pounds or more delivered to handlers during a marketing season.

8. "Standard Container" means standard containers for potatoes as such containers are defined in the Food and Agricultural Code of California.

9. "Handler" means any person engaged within this State as a distributor of potatoes or as a processor of potatoes or as a shipper of potatoes, who first receives or obtains such potatoes from a producer thereof, and shall include any producer of potatoes who performs any of the functions of a distributor or of a processor or of a shipper as such terms are defined as follows:

a. "Distributor" means any person engaged in the operation of selling, marketing, or distributing potatoes which he/she has produced, or purchased or acquired from a producer, or which he/she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer except such retailer who purchases or acquires from or handles on behalf of any producer, potatoes not theretofore subjected to the regulation of this Program.

b. "Processor" means any person engaged in the operation of receiving, sorting, washing, grading, packing, or otherwise preparing for market or marketing potatoes as herein defined.

c. "Shipper" means any person other than a common carrier who ships potatoes.

10. "To Handle" means to perform any of the functions of a handler as herein defined.

11. "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, potatoes.

12. "Ship" means to transport potatoes or cause them to be transported by any means whatsoever, except such transportation as is necessary in the production or the producer marketing of potatoes to a handler.

13. "Grower-Shipper" means any producer who performs the function of a shipper as herein defined.

14. "Market", unless the context indicates otherwise, shall be synonymous with the phrase "to market" and shall mean to sell, ship, distribute, or otherwise handle.

15. "Prepare for Market" means to receive, sort, wash, grade, pack, process, transport, or otherwise prepare potatoes for market in fresh form for fresh consumption, manufacturing, seed and all other purposes, except potatoes destined for animal feed, starch or flour that are moved under a Disposal Order or By-Products Permit, as defined in the Food and Agricultural Code.

16. "Manufacturing" means in any way altering potatoes from their original fresh form, such as by peeling, dicing, slicing, frying, freezing, fermenting, dehydrating, parboiling, boiling, canning, distilling, etc.

17. "Seed Potatoes" means potatoes to be planted to produce potatoes commercially or to produce seed potatoes.

18. "Books and Records" means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data reflecting operations under this Program.

19. "Marketing Season," "Fiscal Year," and "Fiscal Period" are synonymous and mean the period beginning October 1, of any year and extending through September 30 of the following year.

ARTICLE II

CALIFORNIA POTATO RESEARCH ADVISORY BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. A Board to be known as the California Potato Research Advisory Board is hereby established to assist the Department in the administration of this Program. The Board shall be composed of eight (8) members, all of whom shall be producers of potatoes as herein defined. (Amended 9/1/88 and 11/10/02)

2. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member.

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. The term of office of members and alternate members of the Board, shall be three (3) years, beginning September 1 of the year in which they are appointed and continuing at the pleasure of the California Department of Food and Agriculture (Department) through August 31 of the third year following their appointment, or until their successors have been appointed and have qualified. (Amended 11/1/97)

5. Representation on the Board shall be by districts as herein described, or as such districts or district representation may be changed by recommendation of the Board with the approval of the Department, to maintain equitable representation in accordance with areas of production. Any such change of boundary lines of said districts or change in district representation shall be deemed to be a minor amendment to this Program. (Amended 9/1/88)

District No. 1 (Southern California Area) – shall have one (1) member and one (1) alternate member and shall consist of the following counties: San Diego, Imperial, Riverside, Orange, San Bernardino, Ventura and Santa Barbara. (Amended 11/10/02)

District No. 2 (Central California Area) – shall have four (4) members and four (4) alternate members and shall consist of the following counties: San Luis Obispo, Monterey, San Benito, Los Angeles, Kern, Kings, Tulare, Fresno, Madera, Merced, Mariposa, Inyo and Mono. (Amended 11/10/02)

District No. 3 (Central Coast, Delta/Sacramento Area) – shall have one (1) member and one (1) alternate member and shall consist of the following counties: Stanislaus, Tuolumne, Santa Cruz, Santa Clara, San Mateo, Alameda, San Francisco, Contra Costa, San Joaquin, Calaveras, Alpine, Solano, Sacramento, Amador, Marin, Sonoma, Napa, Yolo, Sutter, Placer, El Dorado, Yuba, Nevada and Sierra. (Amended 11/10/02)

District No. 4 (Northern California Area) – shall have two (2) members and two (2) alternate members and shall consist of the following counties: Colusa, Glenn, Butte, Plumas, Trinity, Tehama, Shasta, Lassen, Siskiyou, Modoc, Mendocino, Lake, Humboldt and Del Norte. (Amended 11/10/02)

6. Notwithstanding other provisions of this Article II, and upon recommendation of the Board, the Department may also appoint one (1) member and one (1) alternate member to the Board to represent the general public. Such persons shall not be involved in any way with the production or marketing of potatoes and shall have all of the rights and privileges, including voting, of any other member or alternate member of the Board. The regular term of office of any member or respective alternate member appointed pursuant to this subsection 6 shall be the same as in subsection 4 above. (Amended 3/1/76, 9/1/88 and 11/1/97)

Section B. INITIAL ADVISORY BOARD.

1. The members and their respective alternates of the initial Advisory Board shall serve from the date of their appointment through August 3, 1976, or until their successors are appointed and have qualified.

2. Nominations of persons eligible to serve on the initial Advisory Board shall be received at the public hearing held on this Program.

3. The Department shall appoint the initial members and their alternates from nominations received at such public hearing, and such nominations shall be in accordance with the district classification as set forth in Section A of this Article.

Section C. NOMINATION AND APPOINTMENT OF SUCCEEDING MEMBERS AND ALTERNATE MEMBERS OF THE ADVISORY BOARD.

1. Starting in 1998, before the beginning of the 1998-1999 marketing season, and every third year thereafter, a nomination meeting or meetings shall be held in each district for the purpose of receiving nominations for members and alternate members of the Advisory Board. In making appointments of members and their respective alternates to the Board, the Department shall give due consideration to nominations received at district nomination meetings. If the Department deems it desirable it may hold more than one meeting in the district. (Amended 11/1/97)

2. Each member and alternate member of the Board shall be, during his/her term of office, a producer in the district from which he/she is appointed.

Section D. FAILURE TO NOMINATE" In the event nominations are not made pursuant to Section C of this Article, the Department may appoint the members of the Advisory Board and their respective alternates, without regard to nominations, from persons who are qualified as provided for in Section A of this Article.

Section E. QUALIFICATION. Any person appointed by the Department as a member or as an alternate member of the Board shall qualify by filing with the Department a written acceptance and such other documents as may be required.

Section F. ALTERNATE MEMBERS.

1. An alternate member of the Board shall, in the absence of the member for whom he/she is an alternate, sit in the place and stead of such member while attending any such meetings. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act in his/her place and stead until a successor of such member is appointed and has qualified.

2. If the absence of Board members and their assigned alternates results in too few members being present to constitute a quorum, or seventy-five percent (75%) of the Board in the case of minor amendments, the Board Chairman shall designate an alternate member, whose assigned member is also present, to sit in place of an absent member from the same district for the duration of the meeting. Alternates shall not represent other than their own districts. This action shall be taken with agreement of the majority of members present. (Amended 11/1/97)

Section G. VACANCIES. The Department shall fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Advisory Board. In replacing a member or alternate member of the Advisory Board, the Department may take into consideration any nominations made by the remaining members; provided, however, that such nominees shall be appointed in accordance with the provisions of Section A of this Article.

Section H. ORGANIZATION.

1. The California Potato Research Advisory Board shall not perform any of its duties nor exercise any of the powers herein granted when more than three (3) vacancies in its membership exist.

2. Five (5) members of the Board, or their voting alternates, shall constitute a quorum if and when the Board consists of eight (8) members and their respective alternates. Six (6) members and their respective alternates shall constitute a quorum if and when the Board consists of ten (10) members and their respective alternates. Any action of the Board shall require an affirmative vote of not less than the quorum present. (Amended 9/1/88)

3. The Board shall select a chairman and a vice-chairman from its membership, and a Department and such other officers as it may desire who may or may not be members of the Board, and may adopt such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary.

Section I. COMMITTEES. The Board may recommend and the Department may appoint such committees as may be deemed necessary, including an Advisory Committee consisting of handlers who re not also producers, to assist the Board and the Department in performing duties authorized pursuant to this Program.

Section J. EXPENSES. The members of the Board, alternate members when acting as members or when requested by the Board, and committee members shall be reimbursed for necessary expenses incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section K. DUTIES AND POWERS OF THE ADVISORY BOARD. The Advisory Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this Program.
2. To recommend to the Department administrative rules and regulations relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.
6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Program and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall at all times be subject to examination by the Department or its duly authorized representatives.
8. To employ such personnel as may be deemed necessary and to fix their compensation and terms of employment.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD. The members of the Board or any committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, shipper, grower-shipper, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, committee, or employee. The liability of the members of the Board, its committees, or employees, shall be several and not joint, and no member shall be liable for the default of any other member.

ARTICLE III

GENERAL RESEARCH

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES. The Advisory Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research relating to production, processing, and distribution of potatoes. Such research activities may include, but shall not be limited to research, development and survey programs relating to varietal development, seed improvement, production, harvesting, handling, transportation from field to processing points and from processing points to market, and processing or preparation for market of any or all varieties of potatoes. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies, and do all things necessary and proper to the conduct of a potato research and development and survey program, limited only by the provisions of Sections 58892 and 58892.1 of the Act.

Section B. DISSEMINATION OF RESEARCH INFORMATION. The Advisory Board, with the approval of the Department, may release, distribute, and disseminate the results of research studies, surveys, and information obtained as a result of research, to appropriate parties.

ARTICLE IV

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. The Board shall also recommend a rate or rates of assessment to be levied upon producers of California potatoes upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserve as set forth in said budget or budgets, as follows: during any marketing season, such rate or rates shall not exceed a total of one cent per one hundred pounds (\$0.01 per cwt.) prepared for market or equivalent basis on all potatoes delivered by producers and received by handlers.

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE DEPARTMENT. If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, it may approve such budgets and rates; provided, however, that in no event shall said rates of assessment exceed the maximum rates authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS. The obligation to pay assessments under this Program shall apply to producers on all potatoes produced for market by said producers, delivered to handlers, prepared for market and marketed by said handlers. To facilitate collection, each handler of potatoes shall pay the entire applicable assessment on all potatoes received by him from a producer at the rates approved by the Department pursuant to the provisions of this Program. The handler shall, however, deduct any assessment paid for and on behalf of the producer from any money owed by the handler to the producer. The Department shall verify that proper payment has been made by handlers for and on behalf of producers. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a State court of competent jurisdiction for the collection thereof, pursuant to the provisions of Section 58929 of the Act. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10% of such unpaid assessment).

Section D. REFUNDS. Any money collected as assessments during the marketing season and not expended in connection with this Program may, at the discretion of the Department, be refunded after the close of any marketing season upon a pro rata basis to all persons from whom assessments were collected; or all or a portion of such money, as may be recommended by the Board and approved by the Department may be carried over into the next marketing season if the Department finds that such money may be required in defraying the cost of this Program in such succeeding season.

ARTICLE V

GENERAL PROVISIONS

Section A. PROHIBITION OF ACTIVITIES NOT AUTHORIZED UNDER THIS PROGRAM. This Program does not authorize and expressly prohibits as activities under this Program, any control or regulation of the volume, quantity, grade, size, or quality of potatoes which may be marketed during any marketing season. The Program does not authorize and expressly prohibits as activities under this Program advertising or sales promotion of potatoes. Nothing in this section shall be construed to restrict or prohibit the dissemination of research information authorized under Article III, Section B of this Program.

Section B. ADMINISTRATIVE RULES AND REGULATIONS. Upon the recommendation of the California Potato Research Advisory Board, the Department is authorized to issue and make effective such administrative rules and regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objectives of this Program.

Section C. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING ORDERS. Insofar as may be practicable, the administration of this Program may be coordinated with any other marketing order or agreement or program that may be effective for potatoes under either State or Federal statutes, or may be coordinated with State or Federal marketing orders or agreements or programs for any other commodity.

ARTICLE VI

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representatives such information as may be, from time to time, requested by him relating to their operations under this Program, and shall permit the inspection by said Department or its duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. REPORTS TO THE ADVISORY BOARD. Upon request of the Advisory Board, made with the approval of the Department, each person shall furnish to the Board in such manner and at such times as the Board prescribes, and in addition to such other reports as are specifically provided for herein, such other information as will enable the Board to perform its duties and to exercise its powers in the proper administration and enforcement of this Program.

Section C. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him to any other person, save to a person with like right to obtain the same, or any attorney employed by the Department to give legal advice thereupon, or by court order.

Section D. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him tends to incriminate him or subjects him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he/she may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by him.

ARTICLE VII

APPEALS

Section A. APPEALS. Any person regulated by this Program may petition the Department to review any order or decision of the Advisory Board. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of the Advisory Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any such petition and may revise any order or decision upon which an appeal is taken.

ARTICLE VIII

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

ARTICLE IX

DURATION OF IMMUNITIES

Section A. DURATION OF IMMUNITIES. The benefits, privileges, and immunities conferred by virtue of the provisions hereof shall cease upon its termination except with respect to acts done under and during the time the provisions hereof are in force and effect.

ARTICLE X

AGENTS

Section A. AGENTS. The Department may, by a designation in writing, name any person, including any officer or employee of the State or any branch or division in the California Department of Food and Agriculture, to act as its agent or representative in connection with any of the provisions hereof.

ARTICLE XI

DEROGATION

Section A. DEROGATION. Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department or of the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XII

SEPARABILITY

Section A. SEPARABILITY. If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This Program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act. (Amended February 16, 1984.)

Section B. TERMINATION. Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Program or any provision thereof whenever it finds, after a public hearing duly noticed and held in accordance with provisions of Article 6, Chapter 1, Division 21 of said Food and Agricultural Code, that this Program or any provision thereof is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provisions of or terminate this Program in accordance with the provisions of Sections 59082, 59084 or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension or termination, no amendment, suspension, or termination of the Program issued by the Department shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Program.